

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Gary Voshell

NOTICE OF HEARING AND
MOTION FOR RELIEF FROM
AUTOMATIC STAY

Debtor

Chapter 13, Case No. 04-30859

TO: Gary Voshell, INCLUDING TRUSTEE AND OTHER INTERESTED PARTIES

1. Option One Mortgage Corporation, (*Movant*), a corporation, by its undersigned attorneys, moves the Court for the relief requested below and gives notice of hearing herewith.

2. The Court will hold a hearing on this motion at 9:30 am on September 8, 2004, in Courtroom 228A, 316 North Robert Street, St. Paul, MN 55101 or as soon thereafter as counsel can be heard.

3. Any response to this motion must be filed and delivered not later than on September 2, 2004, which is three days before the time set for the hearing (excluding Saturdays, Sundays, and holidays), or filed and served by mail not later than August 27, 2004, which is seven days before the time set for the hearing (excluding Saturdays, Sundays and holidays).

UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.

4. This court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157 and 1334, Federal Rules of Bankruptcy Procedure 5005 and Local Rule 1070-1, and is a core

proceeding. The petition commencing this Chapter 13 case was filed on February 16, 2004. The case is now pending in this court.

5. This motion arises under 11 U.S.C. § 362 and Federal Rules of Bankruptcy Procedure 4001. This motion is filed under Federal Rules of Bankruptcy Procedure 9014 and Local Rules 1201-1215. Movant requests relief with respect to a mortgage lien encumbering real property of Debtor.

6. Debtor above-named are the owner of certain real property located at 214 First Avenue, Albert Lea, MN 56007, legally described as follows, to-wit:

Lot 3, Block 21, Morin's 1901 Subdivision of Outlots 3, 4, & 5 and parts of Block 17 and 20, Morin's Addition to the City of Albert Lea.

7. The indebtedness of Gary Voshell is evidenced by a Promissory Note and Mortgage dated March 27, 2000, filed of record in the Freeborn County Recorder's office on March 31, 2000, and recorded as Document No. 408974. A true and correct copy of the front page of the recorded mortgage is attached as Exhibit A.

8. Movant has filed a Proof of Claim for delinquent payments. Upon information and belief, said Plan has now been confirmed.

9. Pursuant to said Plan, the Debtor was to maintain monthly payments due and payable pursuant to the indebtedness to Movant outside the Plan.

10. The Debtor has failed to pay the monthly payments on the indebtedness, outside the Plan for the months of June 1, 2004 to the present date and as of the hearing date September 1, 2004 will be due for a total delinquency of \$1,669.56 together with reasonable attorneys fees and costs incurred pursuant to the terms of the note and mortgage.

11. By reason of the foregoing, Debtor is in default on payments under the note, mortgage and the Chapter 13 Plan. Movant is inadequately secured and entitled to have the

automatic stay lifted and vacated so it can commence foreclosure against the property under the mortgage pursuant to Minnesota Statutes.

WHEREFORE, Movant by its undersigned attorney, moves the Court for an Order that the automatic stay provided by 11 U.S.C. Section 362 (A) be terminated to permit Movant to foreclose its mortgage on the subject property, and for such other and further relief as may be just and equitable.

Dated: August 19, 2004

USSET & WEINGARDEN P.L.L.P

By: /E/ Paul A. Weingarden/Brian H. Liebo
Paul A. Weingarden, #115356
Brian H. Liebo #277654
Attorney for Movant
4500 Park Glen Road, #120
Minneapolis, MN 55416
(952) 925-6888

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Gary Voshell

AFFIDAVIT OF PETITIONER

Debtor

Chapter 13, Case No. 04-30859

STATE OF California)

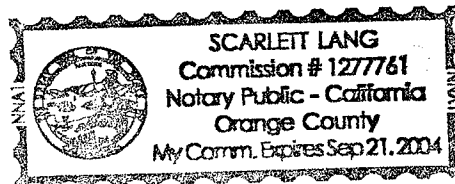
COUNTY OF Orange)

Andy Haug, being first duly sworn, deposes and states on oath that she/he is employed by Option One Mortgage Corporation, the movant in this action, that she/he has read the annexed Notice of Hearing and Motion for Relief From Automatic Stay, and that it is true of her/his knowledge to the best of her/his information.

Andy Haug

Subscribed and sworn to before me this
10 day of 8, 2004.

Scarlett Lang
Notary Public



MINNESOTA
County of Freeborn
Registration tax hereon of
\$83.12 Paid No. 20503

March 31, 2000
David A. Gustaf
Auditor-Treasurer
David B. Larson
Deputy
Bill Martinson

OFFICE OF COUNTY RECORDER
FREEBORN COUNTY MINNESOTA

I hereby certify that the within instrument was
filed in this office for record this 31st day
of March, 2000 at
10:35 o'clock A. M, and was duly recorded
as Instrument No. 408974

LKT
LINDA K. TUTTLE COUNTY RECORDER

[Space Above This Line For Recording Data]

WHEN RECORDED MAIL TO:
OPTION ONE MORTGAGE CORPORATION
P.O. BOX 57076
IRVINE, CA 92619-7076
ATTN: QUALITY CONTROL
Loan Number: 121012425
Servicing Number: 275588-2

MORTGAGE

THIS MORTGAGE ("Security Instrument") is given on March 27, 2000. The mortgagor is
GARY EUGENE VOSHELL, a single man

("Borrower").

This Security Instrument is given to

Option One Mortgage Corporation, a California Corporation
which is organized and existing under the laws of CALIFORNIA, and whose address is
3 Ada, Irvine, CA. 92618 ("Lender").

Borrower owes Lender the principal sum of THIRTY SIX THOUSAND FOUR HUNDRED
... AND NO/100THS Dollars (U.S. \$36,400.00).

This debt is evidenced by Borrower's note dated the same date as this Security Instrument ("Note"), which provides for monthly
payments, with the full debt, if not paid earlier, due and payable on April 01, 2030 and for interest
at the yearly rate of 12.990% percent. This Security Instrument secures to Lender: (a) the repayment of the
debt evidenced by the Note, with interest, and all renewals, extensions and modifications of the Note; (b) the payment of all other
sums, with interest, advanced under paragraph 7 to protect the security of this Security Instrument; and (c) the performance of
Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower does hereby
mortgage, grant and convey to Lender, with power of sale, the following described property located in

Freeborn County, Minnesota:
34-007-5130

SEE LEGAL DESCRIPTION ATTACHED HERETO AND MADE A PART THEREOF.

which has the address of 214 FIRST AVENUE,
[Street] ALBERT LEA
Minnesota 56007 ("Property Address");
[Zip Code]

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, appurtenances,
and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security
Instrument. All of the foregoing is referred to in this Security Instrument as the "Property."

BORROWER COVENANTS that Borrower is lawfully seised of the estate hereby conveyed and has the right to
mortgage, grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower
warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

COVENANTS. Borrower and Lender covenant and agree as follows:

1. Payment of Principal and Interest; Prepayment and Late Charges. Borrower shall promptly pay when due the

Lot 3, Block 21, Morin's 1901 Subdivision of Outlots 3, 4 & 5 and parts of
Block 17 and 20, Morin's Addition to the City of Albert Lea.

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Gary Voshell

MEMORANDUM OF LAW

Debtor

Chapter 13, Case No. 04-30859

11 U.S.C. Section 362(d) provides that on request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under section (a) of this section for cause, including lack of adequate protection of an interest in property of such party in interest. Failure of a Chapter 13 debtor to make postconfirmation payments to a mortgagee is sufficient cause for relief from the automatic stay. Reinbold vs. Dewey County Bank, 942 F.2d 1304 (8th Cir. 1991). Following the debtor's filing of the petition on February 16, 2004 no payment has been made to movant for the month(s) of June 1, 2004 to the present and as of the hearing date September 1, 2004 will be due. Accordingly, cause exists for the granting of relief from the automatic stay.

WHEREFORE, Option One Mortgage Corporation respectfully requests this Court to grant movant relief from the automatic stay of 11 U.S.C. Section 362(a).

Dated: August 19, 2004. USSET & WEINGARDEN P.L.L.P

By: /E/ Paul A. Weingarden/Brian H. Liebo
Paul A. Weingarden, #115356
Brian H. Liebo #277654
Attorney for Movant
4500 Park Glen Road, #120
Minneapolis, MN 55416
(952) 925-6888

U.S. BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Gary Voshell

Debtor

UNSWORN DECLARATION
FOR PROOF OF SERVICE

Chapter 13, Case No. 04-30859

Erin Kay Buss, employed on this date by USSET & WEINGARDEN, attorney(s) licensed to practice law in this court, with office address of Suite 120, 4500 Park Glen Road, Minneapolis, Minnesota 55416, upon penalty of perjury, declares that on August 19, 2004, I served the annexed Notice of Hearing and Motion for Relief from Automatic Stay upon each of the entities named below by mailing to them a copy thereof by enclosing same in an envelope with first class mail postage prepaid and depositing same in the post office at Minneapolis, Minnesota, addressed to each of them as follows:

Office of the United States Trustee
1015 U.S. Courthouse
300 South Fourth Street
Minneapolis, MN 55415

Jasmine Z. Keller
Chapter 13 Trustee
310 Plymouth Building
12 South 6th Street
Minneapolis, MN 55402

William L. Bodensteiner
Attorney at Law
309 S. Main Street
Austin, MN 55912

Gary Voshell
214 First Avenue
Albert Lea, MN 56007

/E/ Erin Kay Buss
Erin Kay Buss

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Gary Voshell

ORDER

Debtor.

Chapter 13, Case No. 04-30859

The above entitled matter came on for hearing upon motion of Option One Mortgage Corporation, (*Movant*) pursuant to 11 U.S.C. Section 362 on September 8, 2004 at the U.S. Bankruptcy Court, St. Paul, Minnesota. Appearances were as noted in the record. Based upon the evidence adduced at said hearing, the arguments of counsel, and the Court being fully advised of the premises,

IT IS HEREBY ORDERED THAT:

The automatic stay imposed by 11 U.S.C. §362 is hereby terminated as to the real property over which the Movant, its successors or assigns, has an interest, said property legally described as:

Lot 3, Block 21, Morin's 1901 Subdivision of Outlots 3, 4, & 5 and parts of Block 17 and 20, Morin's Addition to the City of Albert Lea.

Movant may proceed to foreclose its mortgage in accordance with Minnesota Statutes. Movant's request for attorneys fees and costs shall not be considered as this is governed by state law. Notwithstanding Federal Rules of Bankruptcy Procedure 4001(a)(3), this order is effective immediately.

Dated this __ day of _____, 2004.

Judge of the Bankruptcy Court